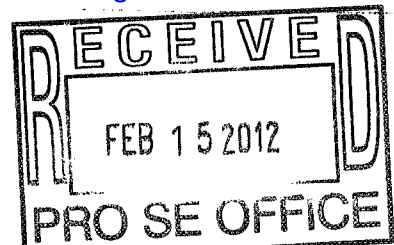


UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MICHAEL IDOWU

(In the space above enter the full name(s) of the plaintiff(s).)

v.



12 CIV. 1238

COMPLAINT

under the
Civil Rights Act, 42 U.S.C. § 1983

Defendant No. 1 DR MIDDLETON

Defendant No. 2 DR SUPPLE

Defendant No. 3 DR AVANZATO

Defendant No. 4 NURSE ~~MIDDLE~~ M.I. PETERSON

Defendant No. 5 NEW YORK STATE DEPARTMENT OF
CORRECTIONAL SERVICES

Jury Trial: Yes ☒ No ☐
(check one)

(In the space above enter the full name(s) of the defendant(s). If you cannot fit the names of all of the defendants in the space provided, please write "see attached" in the space above and attach an additional sheet of paper with the full list of names. The names listed in the above caption must be identical to those contained in Part I. No addresses should be included here.)

I. Parties in this complaint:

- A. List your name, identification number, and the name and address of your current place of confinement. Do the same for any additional plaintiffs named. Attach additional sheets of paper as necessary.

Plaintiff Name MICHAEL IDOWU
ID # 11-A-3553
Current Institution GREEN HAVEN CORRECTIONAL FACILITY
Address P.O. Box 4000
STORMVILLE, NEW YORK 12582-4000

- B. List all defendants' names, positions, places of employment, and the address where each defendant may be served. Make sure that the defendant(s) listed below are identical to those contained in the above caption. Attach additional sheets of paper as necessary.

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Defendant No. 1 Name DR MIDDLETON Shield # _____
 Where Currently Employed FISHKILL CORRECTIONAL FACILITY
 Address BEACON, NEW YORK 12508

Defendant No. 2 Name DR SUPPLE Shield # _____
 Where Currently Employed FISHKILL CORRECTIONAL FACILITY
 Address BEACON, NEW YORK 12508

Defendant No. 3 Name DR AVANZATO Shield # _____
 Where Currently Employed FISHKILL CORRECTIONAL FACILITY
 Address BEACON, NEW YORK 12508

Defendant No. 4 Name NURSE PETERSON Shield # _____
 Where Currently Employed FISHKILL CORRECTIONAL FACILITY
 Address BEACON, NEW YORK 12508

Defendant No. 5 Name NEW YORK STATE DOCS Shield # _____
 Where Currently Employed STATE OFFICE BLDG. CAMPUS
 Address ALBANY, NEW YORK 12226

II. Statement of Claim:

State as briefly as possible the facts of your case. Describe how each of the defendants named in the caption of this complaint is involved in this action, along with the dates and locations of all relevant events. You may wish to include further details such as the names of other persons involved in the events giving rise to your claims. Do not give any legal arguments or cite any cases or statutes. If you intend to allege a number of related claims, number and set forth each claim in a separate paragraph. Attach additional sheets of paper as necessary.

- A. In what institution did the events giving rise to your claim(s) occur? FISHKILL CORRECTIONAL FACILITY
- B. Where in the institution did the events giving rise to your claim(s) occur? FISHKILL MEDICAL UNIT (RMU) FISHKILL SHU - SPECIAL HOUSING UNIT, FISHKILL OFFICE OF MENTAL HEALTH (OMH) SATELITE UNIT.
- C. What date and approximate time did the events giving rise to your claim(s) occur? THE EVENTS WERE ONGOING FROM SEPTEMBER 22nd, 2011 TO NOVEMBER 18th, 2011

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What happened to you?

Who did what?

Was anyone else involved?

Who else saw what happened?

D. Facts: ON SEPTEMBER 21st, 2011, I WAS ADMITTED TO THE R.M.U. MEDICAL UNIT AT FISHKILL CORRECTIONAL FACILITY BECAUSE I HAD "PASSED OUT" AND BUMPED MY HEAD. THE NEXT DAY, I WAS SEEN AND TREATED BY DR MIDDLETON WHO PROMPTLY DIAGNOSED THAT I HAD SUFFERED A "SEIZURE" AND THAT HE WAS GOING TO PRESCRIBE "DIVALPROEX" WHICH IS A MEDICATION TO PREVENT SEIZURES. I TOLD DR MIDDLETON THAT I HAD NEVER SUFFERED FROM SEIZURES IN MY LIFE BUT HE WENT AHEAD AND PRESCRIBED THE MEDICATION ANYWAY. THIS ACTION WAS APPROVED BY DR SUPPLE WHO IS THE HEAD DR AT FISHKILL R.M.U. THIS APPROVAL WAS MADE IN MY PRESENCE.

ON SEPTEMBER 22nd, 2011, NURSE PETERSON BEGAN ADMINISTERING THE MEDICATION ON A DAILY BASIS. I WAS MADE TO TAKE 500mg IN THE MORNING AND AT NIGHT.

ON NOVEMBER 25th, 2011, I STARTED COMPLAINING TO NURSE PETERSON ABOUT FEELING "ILL" BECAUSE I BEGAN TO VOMIT REGULARLY AND I SUFFERED STOMACH PAINS, DIZZINESS, INSOMNIA, LOSS OF COORDINATION, DROWSINESS, MEMORY LOSS AND DIFFICULTY SPEAKING (STUTTERING) I WAS TOLD BY NURSE PETERSON THAT THEY WERE JUST SIDE EFFECTS OF THE DIVALPROEX AND THAT THEY WOULD GO AWAY EVENTUALLY. IN DECEMBER, 2011, I WAS TAKEN FOR A EEG SCAN WHICH REVEALED THAT I DID NOT SUFFER FROM SEIZURES. I WAS THEN TAKEN OFF THE DIVALPROEX MEDICATION.

III. Injuries:

If you sustained injuries related to the events alleged above, describe them and state what medical treatment, if any, you required and received. SINCE THE MEDICATION WAS PRESCRIBED AND ADMINISTERED, I SUFFERED SHORT TERM INJURIES LIKE STOMACH PAINS, DIZZINESS AND JOINT PAINS.

AT THIS TIME, I CONTINUE TO SUFFER FROM SPEECH IMPEDIMENT (STUTTERING) WHICH IS PRONOUNCED AND THERE IS NO CURE FOR IT. I HAVE TRIED TO SEEK HELP BUT THE FACILITY NURSES & DOCTORS HAVE INFORMED ME THAT IT MAY OR MAY NOT GO AWAY WITH TIME.

IV. Exhaustion of Administrative Remedies:

The Prison Litigation Reform Act of 1995, 42 U.S.C. § 1997e(a), requires that "[n]o action shall be brought with respect to prison conditions under section 1983 of this title, or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted." Administrative remedies are also known as grievance procedures.

- A. Did your claim(s) arise while you were confined in a jail, prison, or other correctional facility?
Yes ☒ No ☐

If YES, name the jail, prison, or other correctional facility where you were confined at the time of the events giving rise to your claim(s). FISHKILL CORRECTIONAL FACILITY

B. Does the jail, prison or other correctional facility where your claim(s) arose have a grievance procedure?

Yes ☒ No ☐ Do Not Know ☐

C. Does the grievance procedure at the jail, prison or other correctional facility where your claim(s) arose cover some or all of your claim(s)?

Yes ☒ No ☐ Do Not Know ☐

If YES, which claim(s)? ALL OF THE CLAIMS WERE COVERED

D. Does the grievance procedure at the jail, prison or other correctional facility where your claim(s) arose not cover some of your claim(s)?

Yes ☐ No ☒ Do Not Know ☐

If YES, which claim(s)? _____

E. Did you file a grievance in the jail, prison, or other correctional facility where your claim(s) arose?

Yes ☒ No ☐

If NO, did you file a grievance about the events described in this complaint at any other jail, prison, or other correctional facility?

Yes ☐ No ☐

F. If you did file a grievance, about the events described in this complaint, where did you file the grievance? FISHKILL CORRECTIONAL FACILITY

1. Which claim(s) in this complaint did you grieve? BEING FORCED TO TAKE THE DIVALPROEX MEDICATION WHEN I DID NOT SUFFER FROM SEIZURES

2. What was the result, if any? THE MEDICATION WAS DISCONTINUED. THEY STOPPED FORCING ME TO TAKE THE MEDICATION.

3. What steps, if any, did you take to appeal that decision? Describe all efforts to appeal to the highest level of the grievance process. THERE WAS NO REASON TO APPEAL TO THE NEXT LEVEL. THE GRIEVANCE WAS DECIDED IN MY FAVOR.

G. If you did not file a grievance, did you inform any officials of your claim(s)?

Yes _____ No _____

1. If YES, whom did you inform and when did you inform them? _____

2. If NO, why not? _____

I. Please set forth any additional information that is relevant to the exhaustion of your administrative remedies. _____

Note: You may attach as exhibits to this complaint any documents related to the exhaustion of your administrative remedies.

V. Relief:

State what you want the court to do for you. THE COURT SHOULD CONSIDER THE FACT THAT PETITIONER HAS BEEN "DAMAGED" POSSIBLY FOR THE REST OF HIS LIFE. DUE TO THE FACT THAT PETITIONER WAS FORCED TO TAKE SAID MEDICATION FOR APPROXIMATELY 2 MONTHS DESPITE COMPLAINTS OF SIDE EFFECTS AND DUE TO THE NEGLIGENCE DISPLAYED BY THE NAMED PARTIES, PETITIONER IS ~~SEEKING~~ SEEKING \$10,000,000 IN DAMAGES BECAUSE OF THE FACT THAT HE SUFFERS FROM A PRONOUNCED SPEECH IMPEDIMENT AS A DIRECT RESULT OF BEING FORCED TO TAKE SAID MEDICATION. PETITIONER IS ALSO SEEKING \$5,000,000 IN PAIN AND SUFFERING FOR THE TEMPORARY SIDE EFFECTS SUFFERED. PETITIONER ALSO REQUESTS THAT THE COURT COMPELS THE MEDICAL PERSONNELS INVOLVED TO RECONSIDER THEIR POLICIES AND DISCIPLINE SAID DR/NURSES WHO FAILED TO FOLLOW EXISTING POLICIES.

VI. Previous lawsuits:

A. Have you filed other lawsuits in state or federal court dealing with the same facts involved in this action?

Yes _____ No ☒

B. If your answer to A is YES, describe each lawsuit in questions 1 through 7 on the next page. (If

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there is more than one lawsuit, describe the additional lawsuits on another piece of paper, using the same format.)

1. Parties to this previous lawsuit:

Plaintiff _____

Defendants _____

2. Court (if federal court, name the district; if state court, name the county) _____

3. Docket or Index number _____

4. Name of Judge assigned to your case _____

5. Approximate date of filing lawsuit _____

6. Is the case still pending? Yes _____ No _____

If NO, give the approximate date of disposition _____

7. What was the result of the case? (for example: Was the case dismissed? Was there judgment in your favor? Was the case appealed?) _____

- D. Have you filed other lawsuits in state or federal court otherwise relating to your imprisonment? Yes _____ No ☒

- E. If your answer to D is YES, describe each lawsuit in questions 1 through 7 on the next page. (If there is more than one lawsuit, describe the additional lawsuits on another piece of paper, using the same format.)

1. Parties to this previous lawsuit:

Plaintiff _____

Defendants _____

2. Court (if federal court, name the district; if state court, name the county) _____

3. Docket or Index number _____

4. Name of Judge assigned to your case _____

5. Approximate date of filing lawsuit: _____

6. Is the case still pending? Yes _____ No _____

If NO, give the approximate date of disposition _____

7. What was the result of the case? (for example: Was the case dismissed? Was there judgment in your favor? Was the case appealed?) _____

On
other
claims

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Signed this 26th day of January, 2012. I declare under penalty of perjury that the foregoing is true and correct.

Signature of Plaintiff

Inmate Number

Mailing address

Michael Thum

11 A 3553

GREEN HAVEN CORRECTIONAL FACILITY
P.O. Box 4000
STORMVILLE, NEW YORK 12582-4000

Note: All plaintiffs named in the caption of the complaint must date and sign the complaint and provide their inmate numbers and addresses.

I declare under penalty of perjury that on this 26th day of January, 2012, I will deliver this complaint to prison authorities to be mailed to the *Pro Se* Office of the United States District Court for the Southern District of New York.

Signature of Plaintiff:

Michael Thum

CODE 22 - DISCONTINUE MEDICATION (SHU)

34787-11

(11-23-11)

To: Inmate Grievance Resolution Committee (I.G.R.C.)
 From: Michael Idowu - #A3553 Loc: P gallery - #2 cell
 RE: Medical Prescription / medication

Date: 11/14/11

To Ms Stone, I.G.R.C.

On or around September 20th or September 21st, I "passed out" in my cell whilst I was being housed in the OMT observation ward. I was taken to the Rmu shortly after where I was seen and examined by Dr Supple. Due to me "passing out", I was kept in the Rmu under medical observation for a couple of days.

On September 22nd, 2011, I was prescribed a medicine called Depikote by Dr Middleton because it was determined that I had suffered from a "Seizure" instead of just simply passing out. The Depikote medicine has been administered twice a day since then and up until the present day.

The reason for this grievance is because I don't want to take this medication anymore. I do not suffer from Seizure attacks and in all my 35 years I have never suffered from Seizures. I have tried to address this issue with the nurse especially nurse Peterson who administers the medicine on a daily basis. Whenever I have

over →

34787-11

refused to take the medicine, I have been threatened with being issued a misbehavior report for refusing to comply with the medication procedure. I have actually been written up already for not taking the medication.

Also, Since I have started taking the Depikote, I have been experiencing side effects that have been affecting my bodily functions as well as my overall behavior pattern and psychological effects, namely, Stomach Cramps and pains, Constipation, Vomiting, headaches, Sleeplessness, restlessness, agitation, difficulty speaking, Stammering, impulsive behavior, mood swings, just to name a few. Whenever I have complained of these side effects to nurse Peterson, she has told me repeatedly that they are just my body's natural reaction to the medication and that I would get used to them eventually and that they would go away after a while.

Action Requested.

Michael J. [Signature]
11-22-11

Being that I have never suffered from seizures and I do not currently suffer from seizures, I demand that I be taken off the Depikote medication asap. Why am I being forced to take a medication I don't need and the fact that I'm suffering from side effects is more of a reason to discontinue the medication.

fcf # 34787-11

FORM 2131E (REVERSE) (REV. 6/06)
Response of IGRC

11-30-11
GRIEVANCE IS ACCEPTED. PER J HUANZITO M.S.
F.H.S.I) THE GRIEVANT HAS BEEN TAKEN OFF
THE MEDICATION EFFECTIVE 11/18/11 PENDING A
EEG.

11-30-11
Date Returned to Inmate _____ IGRC Members _____
Chairperson _____
Return within 7 calendar days and check appropriate boxes.*

- ☐ I disagree with IGRC response and wish to appeal to the Superintendent.
- ☒ I agree with the IGRC response and wish to appeal to the Superintendent.
- ☐ I have reviewed deadlocked responses. Pass-Thru to Superintendent
- ☐ I apply to the IGP Supervisor for review of dismissal

Signed _____ Grievant
Date 12/2/11

Grievance Clerk's Receipt Date

To be completed by Grievance Clerk.

Grievance Appealed to the Superintendent _____
Date

Grievance forwarded to the Superintendent for action _____
Date

*An exception to the time limit may be requested under Directive #4040, section 701.6(g).